

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MODERN HANDLING EQUIPMENT
OF N.J., INC.
75 New Street
Edison, NJ 08837,

Plaintiff,

V.

GOULD INTERNATIONAL, INC.,
d/b/a GIANT BATTERY CO.
9 Brinker Drive
Chalfont, PA 18914,

Defendant

Civil Action No. 02-CV-3204

AMENDED COMPLAINT

1. Plaintiff, Modern Handling Equipment of N.J., Inc. (“Modern”), is a corporation organized and existing under the laws of the state of Delaware, with its principal place of business at 75 New Street, Edison, NJ 08837.

2. Defendant, Gould International, Inc., d/b/a Giant Battery Co. (“Giant”), is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, with its principal place of business at 9 Brinker Drive, Chalfont, PA 18914.

3. This Court has jurisdiction of this civil action pursuant to 28 U.S.C. §1332(a), in that the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different States.

4. At times material hereto, Giant was an authorized distributor of industrial batteries and chargers manufactured by GNB Industrial Battery Co., which, upon information

and belief, now does business as GNB Industrial Power, a division of Exide Technologies, Inc. (collectively “GNB”).

5. At times material hereto, Modern sold forklifts to General Motors Corporation (“GM”) at its facility in Linden, New Jersey, which forklifts were powered by industrial batteries.

6. At the special instance and request of GM, Modern undertook to supply GM with GNB batteries and chargers for the forklifts Modern sold to GM.

7. For reasons relating to the chain of distribution, Modern placed orders for such GNB batteries and chargers through Hyster Co. (“Hyster”), also an authorized GNB distributor, and GNB shipped those batteries and chargers to Giant or, at Giant’s request, directly to GM.

8. In furtherance of this distribution arrangement, GNB invoiced Hyster for such batteries and chargers, Hyster invoiced Modern, Modern invoiced Giant and Giant invoiced GM.

9. Such distribution arrangement further envisioned that GM would thereafter make payment to Giant for such batteries and chargers, Giant would make payment to Modern, Modern would make payment to Hyster and Hyster would make payment to GNB.

10. From April, 2001, through August, 2001, in connection with orders from GM for batteries and chargers, GNB shipped batteries and chargers to Giant for delivery GM, or shipped batteries and chargers directly to GM, for which GNB invoiced Hyster, Hyster invoiced Modern, Modern invoiced Giant and Giant invoiced GM.

11. The invoices from Modern to Giant for such batteries and chargers, in the amount of \$280,806.79, are attached hereto as Exhibit “A”. The reverse side of a representative

Modern invoice, which contains the terms and conditions upon which Modern transacts business, is attached hereto as Exhibit "B".

12. Modern paid Hyster for such batteries and chargers.

13. On information and belief, GM paid Giant for such batteries and chargers.

14. Giant paid Modern \$22,000 for batteries and chargers under Modern invoice 333-24983 and \$15,045 under Modern invoice 330-07402, leaving currently due and owing by Giant to Modern for such batteries and chargers the sum of \$243,761.79.

15. On or about May 3, 2001, Modern supplied Giant with a driver and coil for which it invoiced Giant in the amount of \$96.00, which amount remains unpaid. A copy of that invoice is attached hereto as Exhibit "C".

16. On or about August 24, 2001, Modern supplied Giant with parts for which it invoiced Giant in the amount of \$435.66, which amount remains unpaid. A copy of that invoice is attached hereto as Exhibit "D".

17. From approximately May, 2000 to August, 2001, Modern ordered GNB batteries from Giant for Modern customers other than GM, which batteries were to be shipped by GNB to Giant and thereafter by Giant to Modern or to Modern's customers.

18. As is more fully set forth on Exhibit "E" attached hereto, Giant invoiced Modern the sum of \$43,543.93 for those batteries, which invoices Modern paid.

19. Upon information and belief, GNB shipped those batteries to Giant but Giant never delivered them to Modern.

20. Modern has demanded that Giant deliver those batteries to Modern, which Giant has failed and refused to do. In the alternative, Giant is obligated to return to Modern the

sum of \$43,543.93 that Modern paid for those batteries, which Giant has likewise failed and refused to do.

COUNT ONE

21. Modern incorporates by reference paragraphs 1 through 20 hereof as if set forth in full.

22. Giant's failure to pay Modern the amounts due and owing Modern constitutes a breach of contract for which Giant is liable to Modern.

WHEREFORE, Plaintiff, Modern Handling Equipment of N.J., Inc., respectfully prays this Court to enter judgment in its favor and against Defendant, Gould International, Inc., d/b/a Giant Battery Co., in the amount of \$287,837.38, together with interest and costs.

COUNT TWO

23. Modern incorporates by reference paragraphs 1 through 22 hereof as if set forth in full.

24. Giant's failure to pay Modern the amounts due and owing Modern constitutes unjust enrichment for which Giant is liable to Modern.

WHEREFORE, Plaintiff, Modern Handling Equipment of N.J., Inc., respectfully prays this Court to enter judgment in its favor and against Defendant, Gould International, Inc., d/b/a Giant Battery Co., in the amount of \$287,837.38, together with interest and costs.

COUNT THREE

25. Modern incorporates by reference paragraphs 1 through 24 hereof as if set forth in full.

26. Giant's failure to deliver to Modern the batteries that, upon information and belief, GNB shipped to Giant but Giant never delivered to Modern constitutes conversion for which Giant is liable to Modern.

WHEREFORE, Plaintiff, Modern Handling Equipment of N.J., Inc., respectfully prays this Court to enter judgment in its favor and against Defendant, Gould International, Inc., d/b/a Giant Battery Co., in the amount of \$43,543.93, together with interest and costs.



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